

REMARKS

Disposition of the Claims

Upon entry of the amendments herein, Claims 1, 4-7, 16-17 and 25 are pending in the instant application. Claims 12-15 are withdrawn and Claims 2-3, 8-11 and 18-24 have been cancelled.

Applicants have amended Claim 1 to indicate that R^a is an alkoxy in the first definition of Q. Support for this amendment can be found in the originally filed claims.

No new matter has been added.

Rejection of Claims 1, 4-7, 16, 17 and 25 Under 35 U.S.C. § 112, Second Paragraph

The Examiner has noticed that in Claim 1 there is something missing from the definition of R³ in the first definition of Q since the definition reads "R³ is". Applicants have amended Claim 1 to indicate that "R³ is an alkoxy." Support for this amendment can be found in the originally filed claims and in Example 3. Upon entry of this amendment, Applicants believe Claim 1, and the claims depending therefrom, are in condition for allowance and respectfully request reconsideration and withdrawal of this rejection.

Provisional Obviousness-Type Double Patenting Rejection of Claims 1, 4-7, 16, 17 and 25 Over US Patent Applications Nos. 11/547,046 and 12/088,608

The Examiner has provisionally rejected Claims 1, 4-7, 16, 17 and 25 for obviousness-type double patenting over Claims 1, 10, 14, 16, 21, 28-30, 32, 37 and 38 of US application number 11/547,046 (hereinafter "the '046 application"). In addition, the Examiner has provisionally rejected Claims 1, 4-7, 16, 17 and 25 for obviousness-type double patenting over Claims 1, 2, 16, 17, 21, 27-31, 35, 36 and 37 of US application number 12/088,608 (hereinafter "the '608 application"). The Examiner asserts that the instant claims are not patentable over the claims in the '046 and the '608 applications because the instant claimed invention is generically claimed in each of the '046 and '608 applications. Applicants disagree. However, to expedite prosecution, Applicants are filing a terminal disclaimer and therefore request that the rejection be reconsidered and withdrawn.

Rejoinder of Process Claims 12-15

In the paragraph spanning page 7-8 of the restriction requirement mailed on April 4, 2008, the Examiner indicated that withdrawn process claims that depend from or otherwise require all the limitation of allowable product claims will be considered for rejoinder. However, in the Final Office

Action mailed on December 31, 2009, the Examiner indicated that because there was no generic or linking claim, process Claims 12-15 would not be rejoined.

Applicants respectfully submit that a generic or linking claim is not required for rejoinder of the product and process claims. M.P.E.P. § 806.05(h) indicates the following:

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

Since Applicants' process claims 12-15 require all of the limitations of the product claims and Applicants believe the product claims are in condition for allowance, Applicants respectfully request that the process claims be rejoined with the product claims.

CONCLUSION

It is respectfully submitted that this application is in condition for allowance.

If there are any remaining issues or the Examiner believes that a telephone conference with the Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617)-871-7802.

Applicants believe that no additional fees are due with this filing. However, if any fees are required, the Commissioner is authorized to charge Deposit Account No. 50-4409 in the name of Novartis for any fees due.

Respectfully submitted,

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